



# House of Representatives

General Assembly

**File No. 553**

*January Session, 2011*

House Bill No. 6490

*House of Representatives, April 18, 2011*

The Committee on Judiciary reported through REP. FOX of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM CERTAIN FEDERAL FIREARMS PROHIBITIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective July 1, 2011*) (a) Any person having a  
2       federal firearms disability under 18 USC 922(d)(4) and 18 USC  
3       922(g)(4), as a result of an adjudication or commitment rendered in this  
4       state, may petition the probate court for the district in which such  
5       person resides for relief from the federal firearms disability that  
6       resulted from such adjudication or commitment.

7       (b) The petitioner shall submit to the probate court, together with  
8       the petition and the releases required by subsection (d) of this section,  
9       information in support of the petition, including, but not limited to:

10       (1) Certified copies of medical records detailing the petitioner's  
11       psychiatric history where applicable, including records pertaining to  
12       the specific adjudication or commitment that is the subject of the  
13       petition;

14       (2) Certified copies of medical records from all of the petitioner's  
15       current treatment providers, if the petitioner is receiving treatment;

16       (3) A certified copy of all criminal history information maintained  
17       on file by the State Police Bureau of Identification and the Federal  
18       Bureau of Investigation pertaining to the petitioner or a copy of the  
19       response from said bureaus indicating that there is no criminal history  
20       information on file;

21       (4) Evidence of the petitioner's reputation, which may include  
22       notarized letters of reference from current and past employers, family  
23       members or personal friends, affidavits from the petitioner or other  
24       character evidence; and

25       (5) Any further information or documents specifically requested by  
26       the court, which documents shall be certified copies of original  
27       documents.

28       (c) The petitioner shall cause a copy of the petition and all  
29       supporting documents submitted to the probate court pursuant to  
30       subsection (b) of this section to be delivered to the Commissioner of  
31       Public Safety and shall certify to the probate court that such delivery  
32       has been made.

33       (d) The petitioner shall provide for the release of all of the  
34       petitioner's records that may relate to the petition, including, but not  
35       limited to, health, mental health, military, immigration, juvenile court,  
36       civil court and criminal records, on forms prescribed by the Probate  
37       Court Administrator. The releases shall authorize the Commissioner of  
38       Public Safety to obtain any of such records for use at the probate court  
39       hearing or in any appeal from the decision of the probate court.

40       (e) The petitioner shall ensure that all required information  
41       accompanies the petition at the time it is submitted to the court. Unless  
42       specifically requested by the court, information provided after receipt  
43       of the petition by the court shall not be considered. Information  
44       specifically requested by the court must be received by the court no

45 later than fifteen days after the date of the request in order for the  
46 information to be considered. The court may extend such time period  
47 for good cause shown. Failure to provide the requested information  
48 within such time period shall result in a denial of the petition.

49 (f) Upon the filing of the petition, the probate court shall set a date,  
50 time and place for a hearing and shall give notice of such hearing to (1)  
51 the petitioner, (2) the Commissioner of Public Safety, (3) the court that  
52 rendered the adjudication or commitment, (4) the conservator  
53 appointed for the petitioner, if any, and (5) any other person  
54 determined by the court to have an interest in the matter.

55 (g) The court shall cause a recording of the testimony given at such  
56 hearing to be made. Such recording shall be transcribed only in the  
57 event of an appeal from the decision rendered by the probate court  
58 under this section. A copy of such transcript shall be furnished without  
59 charge to any appellant whom the probate court finds is unable to pay  
60 for such copy. The cost of such transcript shall be paid from funds  
61 appropriated to the Judicial Department.

62 (h) The petitioner shall have the burden of establishing by clear and  
63 convincing evidence that (1) the petitioner is not likely to act in a  
64 manner that is dangerous to public safety, and (2) granting relief from  
65 the federal firearms disability is not contrary to the public interest. The  
66 Commissioner of Public Safety and any other person determined by  
67 the court to have an interest in the matter may present any and all  
68 relevant information at the probate court hearing and in any appeal to  
69 the Superior Court.

70 (i) In determining whether to grant relief under this section, the  
71 court shall consider the following:

72 (1) The circumstances regarding the firearms disability imposed by  
73 18 USC 922(d)(4) and 18 USC 922(g)(4);

74 (2) The petitioner's record, which shall include, at a minimum, the  
75 petitioner's mental health records and criminal history records, if any;

76 (3) The petitioner's reputation, which the petitioner must  
77 demonstrate through character witness statements, testimony or other  
78 character evidence; and

79 (4) Any other relevant information provided by the petitioner, the  
80 Commissioner of Public Safety or any other person determined by the  
81 court to have an interest in the matter.

82 (j) In order to grant relief under this section, the court must find by  
83 clear and convincing evidence that: (1) The petitioner will not be likely  
84 to act in a manner dangerous to public safety, and (2) granting the  
85 relief will not be contrary to the public interest. The court shall include  
86 in its decision the specific findings of fact on which it bases its decision.

87 (k) The petitioner or the Commissioner of Public Safety may appeal  
88 the final decision of the probate court to the Superior Court in  
89 accordance with the provisions of section 45a-186 of the general  
90 statutes. Notwithstanding any other provision of the general statutes,  
91 any review of the decision of the probate court by the Superior Court  
92 shall be de novo.

93 (l) Enforcement of any decision of the probate court granting relief  
94 pursuant to the petition shall be stayed until the period in which to  
95 take an appeal under section 45a-186 of the general statutes has  
96 expired or, if an appeal is taken, until the final decision of the court. If  
97 the court grants the relief and no appeal is taken or an appeal is taken  
98 and the decision is upheld, the court granting relief shall notify the  
99 Commissioner of Public Safety of that decision.

100 (m) As soon as practicable after receiving notice of the decision of  
101 the court granting relief, the Commissioner of Public Safety shall (1)  
102 coordinate the removal or cancellation of the record in the National  
103 Instant Criminal Background Check System (NICCS), and (2) notify the  
104 Attorney General of the United States that the basis of the record no  
105 longer applies.

106 (n) All proceedings in the probate court under the provisions of this

107 section shall be closed to the public and all records of the proceedings  
108 shall be confidential and not subject to disclosure except to the  
109 petitioner or his or her counsel and the Commissioner of Public Safety,  
110 unless the probate court, after notice to the parties and a hearing,  
111 determines that such records should be disclosed for good cause  
112 shown.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	New section

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Various State Agencies	FF - Potential Revenue Gain	4.8 million	4.8 million

Note: FF=Federal Funds

#### **Municipal Impact:** None

#### **Explanation**

The bill establishes a process to protect the rights of citizens who are subject to a prohibition of firearm possession under state and federal law. Enactment of the bill would allow the state to qualify for \$4.8 million in federal funds through the U.S. Department of Justice under the NICS Act Record Improvement Program for States and State Courts. If approved, these funds would be distributed to the Judicial Department, Department of Mental Health and Addiction Services, Office of Policy and Management and Department of Public Safety for computer system enhancements.

The bill would result in additional petitions to the Probate Court. It is anticipated that the number of additional petitions would be minimal, and would not result in additional cost to the Probate Court Administration Fund.

#### **The Out Years**

The annualized ongoing fiscal impact identified above would be subject to availability of Federal appropriations.

**OLR Bill Analysis****HB 6490*****AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM CERTAIN FEDERAL FIREARMS PROHIBITIONS.*****SUMMARY:**

Federal law prohibits anyone who has been “adjudicated as a mental defective” or “committed to a mental institution” from shipping, transporting, receiving, or possessing firearms or ammunition, unless the person’s firearm privileges are restored under a federally approved program. This bill establishes a court procedure for restoring firearm privileges lost because of a state adjudication or commitment. The procedure is similar to the federal procedure for restoring privileges lost as a result of federal adjudications and commitments.

Under the bill, anyone seeking to regain firearm privileges must petition the probate court for relief, and the court must have a hearing on any such petition filed in accordance with the bill’s documentation and deadline requirements. In order to grant relief, the court must find by clear and convincing evidence that (1) the petitioner will not be likely to act in a manner dangerous to public safety and (2) granting relief will not be contrary to the public interest. The bill allows petitioners and the Department of Public Safety (DPS) commissioner to appeal the probate court’s decision to the Superior Court.

EFFECTIVE DATE: July 1, 2011

**RELIEF FROM FEDERAL FIREARMS DISABILITY PROGRAM*****Petitioning for Relief***

Under the bill, anyone seeking relief from federal firearms disabilities must submit a petition to the probate court along with certain releases (described below) and information supporting the

petition, including:

1. certified copies of medical records detailing his or her psychiatric history where applicable, including records on the specific adjudication or commitment that is the subject of the petition;
2. certified copies of medical records from all of his or her current treatment providers, if he or she is being treated;
3. a certified copy of all criminal history information on file with the State Police Bureau of Identification and the FBI pertaining to the petitioner, or a copy of the response from these bureaus indicating that there is no criminal history information on file;
4. evidence of his or her reputation, which may include notarized letters of reference from current and past employers, family members, or friends; affidavits from the petitioner; or other character evidence; and
5. any other information or documents the court specifically request, which documents must be certified copies of original documents.

### ***Releases and Petition***

The petitioner must authorize the release of all of his or her records that may relate to the petition. This includes health, mental health, military, immigration, juvenile court, civil court, and criminal records, on forms prescribed by the probate court administrator. The releases must authorize the DPS commissioner to obtain any of these records for use at the probate court hearing or in any appeal from the probate court's decision.

The petitioner must ensure that the petition contains all required information when it is submitted to the court. After receiving the petition the court will consider additional information only if it requests it from the petitioner. Information it specifically requests



must be received within 15 days of the request in order for it to be considered. The court may extend the deadline for good cause. Failure to provide the requested information by the deadline results in a denial of the petition.

The petitioner must provide the DPS commissioner with a copy of the petition and all supporting documents submitted to the probate court and certify to the probate court that he or she did so.

### ***Hearings***

Once a petition is filed, the probate court must set a date, time, and place for a hearing. It must give notice of the hearing to (1) the petitioner; (2) the DPS commissioner; (3) the court that rendered the adjudication or commitment; (4) the conservator appointed for the petitioner, if any; and (5) anyone it determines has an interest in the matter.

The court must record the hearing. The recording must be transcribed only if the decision is appealed. A copy of the transcript must be furnished free to any appellant whom the court determines cannot pay for it. The cost of the transcript must be paid from Judicial Department funds. The DPS commissioner and anyone the probate court determines has an interest in the matter may present relevant information at the hearing and in any appeal.

In determining whether to grant relief, the court must consider the following:

1. the circumstances of the firearms disability;
2. the petitioner's record, which must include, at least, his or her mental health and criminal history records, if any;
3. the petitioner's reputation, which the petitioner must demonstrate through character witness statements, testimony, or other character evidence; and
4. any other relevant information provided by the petitioner, DPS

commissioner, or anyone the probate court determines has an interest in the matter.

The petitioner has the burden of establishing, and the court must find, by clear and convincing evidence, that (1) the petitioner will not be likely to act in a manner dangerous to public safety, and (2) granting the relief will not be contrary to the public interest. ("Clear and convincing" means that it is highly probably or reasonably certain. Clear and convincing is a greater burden of proof than preponderance of the evidence, but less than evidence beyond a reasonable doubt (*Black's Law Dictionary*, 7<sup>th</sup> ed.). The probate court must include in its decision the specific findings of fact on which it bases its decision.

The probate court proceedings are closed to the public and the court's records of the proceedings are confidential and not subject to disclosure except to the petitioner or his or her counsel and the DPS commissioner. But the probate court may, after notice to the parties and a hearing, disclose the records for good cause.

**Appeals.** The petitioner or the commissioner may appeal the probate court's final decision to the Superior Court. Any review of the probate court's decision must be "*de novo*," which means that the court must take an independent look at the evidence.

Enforcement of any decision granting relief must be stayed until the period for taking an appeal expires or, if an appeal is taken, until the court renders a final decision. If the court grants relief and no appeal is taken or an appeal is taken and the decision is upheld, it must notify the DPS commissioner of its decision.

**Updating Records.** As soon as practicable after the court notifies the commissioner that it has granted relief, the commissioner must (1) coordinate the removal of or cancellation of the pertinent record in the National Instant Criminal Background Check System (NICS) and (2) notify the U.S. attorney general that the basis for the firearms disability no longer applies. (NICS is the federal database used in determining if prospective gun buyers are disqualified from acquiring or possessing

firearms under state or federal law.)

## **BACKGROUND**

### ***Definitions***

Federal law prohibits various categories of people from transporting, selling, receiving, possessing, or shipping firearms. These include anyone who has been “adjudicated as a mental defective” or “committed to a mental institution” (18 USC §§ 922(d)(4) & 922(g)(4)).

Under federal regulations, “adjudicated as a mental defective” means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetence, condition, or disease (1) is a danger to himself or herself or others or (2) lacks the mental capacity to contract or manage his or her own affairs. The term includes a finding of incompetence to stand trial or not guilty by reason of insanity or lack of mental responsibility. “Committed to a mental institution” means a formal commitment by a court, board, commission, or other lawful authority. It includes involuntary commitments for mental health issues or other reasons, such as drug use. It does not include people admitted voluntarily or for observation (27 CFR § 478.11).

### ***Federal Firearms Disabilities***

In 2008, Congress passed the NICS Improvement Amendments Act (PL 110-108) a law to increase the number and types of records submitted to NICS on people prohibited from possessing or acquiring firearms under state or federal law. The act (1) required states to meet specified goals for submitting more complete records to NICS and authorized grants to help states comply and financial penalties (grant reduction) for noncompliance; (2) allows people disqualified on mental health grounds to petition to get their firearm privileges restored under a federally approved state program and (3) provides financial incentives to states that implement such programs and meet other requirements.

### ***Related Law***

Public Act 05-283 required DPS to enter into a memorandum of understanding with the FBI to fully implement NICS in the state. It required DPS to report to NICS the name, date of birth, and physical description of people barred from possessing guns under federal law, including those barred on mental health grounds. But the state has not adopted a relief from disability program.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea    41    Nay   0    (03/30/2011)